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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,182	06/01/2005	Lysander Chrisstoffels	13779-23	8058
45473 7590 11/28/2008 BRINKS, HOFER, GILSON & LIONE P.O. BOX 1340 MORRISVILLE, NC 27560				
EXAMINER SCHLENTZ, NATHAN W				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/537,182

Applicant(s)

CHRISSTOFFELS ET AL.

Examiner

Nathan W. Schlientz

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

Claims 14 and 17 were amended in an amendment filed 12 August 2008. As a result, claims 14-31 are pending and are thus examined herein on the merits for patentability. No claim is allowed at this time.

Withdrawn Rejections

Rejections and/or objections not reiterated from the previous Office Action are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set of rejections and/or objections presently being applied to the instant application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 14-18 and 20-30 are rejected under 35 U.S.C. 102(a) as being anticipated by Zerrer et al. (CA 2 471 239 A1); and under 35 U.S.C. 102(e) as being anticipated by Meyer et al. (US 2006/0142159, which is the English language equivalent of CA 2 471 239 A1 and is relied upon herein).

Meyer et al. disclose aqueous plant-protective agents comprising copolymers based on A) acrylamidopropylmethylenesulphonic (AMPS) acids, B) macromonomers, and C) optionally one or more other comonomer ([0005]-[0011]), wherein suitable macromonomers are esters formed from acrylic acid or methacrylic acid and alkyl ethoxylates chosen from C₁₀₋₂₂ fatty alcohol polyglycol ethers with 7-25 EO units ([0039]-[0052]), and suitable optional comonomers C) include N-vinylpyrrolidone and N-vinylcaprolactam ([0032] and [0058]); wherein said copolymers further comprise at least one pesticide ([0076]). Meyer et al. further disclose that optional comonomer C) includes amides of acrylic acid, such acrylamide ([0032]). Meyer et al. disclose that the proportion by weight of macromonomer B in the polymer, in one preferred embodiment, is 6 to 20 wt.% ([0059]).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1,148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
1. Claims 19 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer et al. and Narayanan et al. (WO 99/37285).

Applicant's claims

Applicants claim a composition comprising at least one active compound for the treatment of plants and at least one copolymer comprising at least one N-vinylamide, at least one ester of an ethylenically unsaturated carboxylic acid wherein the alkoxylate portion of the ester exhibits the formula (I), and optionally at least one additional copolymerizable comonomer. Applicants also claim a method of treating plants for various reasons via applying the said composition.

Determination of the scope and content of the prior art

(MPEP 2141.01)

The teachings of Meyer et al. (and Zerrer et al.) are discussed above and incorporated herein by reference.

Narayanan et al. teach a composition comprising an active chemical and a particulate polysaccharide matrix having improved water dispersibility and dispersion stability in aqueous solutions by the incorporation of an N-vinyl lactam monomer and a

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hydrophobic comonomer, wherein the composition is useful in pre- and post- emergent agrochemical formulations (abstract; page 2, lines 1-6 and 13-19; page 5, lines 21-26; page 6, lines 12-16; and claims 1 and 18).

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

Meyer et al. do not teach the proportion of N-vinyl amide to be 99 to 60 wt.%, alkoxyalkyl (meth)acrylate to be 1-30 wt.%, and optional polymerizable comonomer to be 0 to 10 wt.%, as instantly claimed. However, Meyer et al. do teach that the proportion by weight of macromonomer B in the polymer, in one preferred embodiment, is 6 to 20 wt.% ([0059]).

Narayanan et al. do not explicitly teach their copolymer comprising at least one N-vinylamide, at least one ester of an ethylenically unsaturated carboxylic acid wherein the alkoxyate portion of the ester exhibits the formula (I), and optionally at least one additional copolymerizable comonomer. However, Narayanan et al. do teach a composition comprising an active chemical and a particulate polysaccharide matrix having improved water dispersibility and dispersion stability in aqueous solutions by the incorporation of an N-vinyl lactam monomer and a hydrophobic comonomer, wherein the N-vinyl lactam monomer is preferably N-vinyl pyrrolidone or mixtures of N-vinyl pyrrolidone and N-vinyl caprolactam (page 3, lines 2-7), and the hydrophobic comonomer is a polymerizable compound containing an olefinically unsaturated group, such as lower alkylamino lower alkyl acrylates and methacrylates, lower alkyl vinyl ethers, and mixtures of these compounds, wherein alkylamino alkylmethacrylates are

preferred (page 3, lines 8-12 and 16-24). Narayanan et al. further teach that the concentration of the N-vinyl lactam monomer with respect to the hydrophobic component in the copolymer can vary between about 60 and about 98.5 wt.%, preferably between about 70 and about 95 wt.%, and that the weight ratio of N-vinyl lactam to hydrophobic comonomer is preferably between about 4:1 and 8:1 (page 4, lines 1-12).

Furthermore, Narayanan et al. teach explicit examples of compositions comprising 98:2 and 80:20 ratios of N-vinyl pyrrolidone and dimethylamino ethyl methacrylate (page 11, Examples 5 and 6). Narayanan et al. also teach that the modified matrix provides compatibility with a wide variety of conventional agrochemical agents including plant growth regulants, fertilizers, pre- and post- emergent herbicides, pesticides, fungicides, nematocides, etc. (page 5, lines 21-26, and page 6, lines 12-16).

Finding of *prima facie* obviousness

Rational and Motivation (MPEP 2142-43)

Therefore, it would have been *prima facie* obvious for one skilled in the art at the time of the invention to formulate a composition for treating plants comprising a plant growth regulants, fertilizers, pre- and post- emergent herbicides, pesticides, fungicides or nematocides, at least one N-vinyl amide, such as N-vinylpyrrolidone or N-vinylcaprolactam; at least alkoxyalkyl acrylate or methacrylate, such as esters formed from acrylic acid or methacrylic acid and alkyl ethoxylates chosen from C₁₀₋₂₂ fatty alcohol polyglycol ethers with 7-25 EO units; and optionally at least one lower alkyl vinyl ether, as reasonably taught by Meyer et al. and Narayanan et al. It would have been

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prima facie obvious to formulate the polymer wherein the weight ratio of N-vinyl lactam to hydrophobic monomer (i.e., alkoxyalkyl acrylate or methacrylate comonomer) is preferably between about 4:1 and 8:1, as reasonably taught by Narayanan et al.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan W. Schlientz whose telephone number is (571)272-9924. The examiner can normally be reached on 9:00 AM to 5:30 PM, Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NWS

/Johann R. Richter/
Supervisory Patent Examiner, Art Unit 1616